

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MARK ANTHONY HOUSEWORTH §
VS. § CIVIL ACTION NO. 6:05cv369
DIRECTOR, TDCJ-CID §

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be denied. The Petitioner has filed objections.

The Report and Recommendation of the Magistrate Judge, which contain his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Petitioner, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct.

The Petitioner is challenging three 2002 Smith County convictions for indecency with a child. Magistrate Judge Love initially concluded that the petition is time-barred. He also found that grounds for relief numbers one and two lack merit and ground for relief number three is procedurally barred. The Petitioner conceded that ground for relief number three is procedurally barred. He argued that the petition should not be dismissed as time-barred because he allegedly placed the petition in the prison mail system on September 26, 2005, as opposed to September 29,

2005, as found by the Magistrate Judge. It is noted that the petition would have been timely filed if it was placed in the prison mail system as late as September 28, 2005. It is also noted that the Petitioner alleged in the original petition that he placed the petition in the prison mail system on September 19, 2005. He has clearly made inconsistent statements as to when he placed the letter containing the petition in the prison mail system. Nonetheless, his assertions as to either date are conclusory and insufficient to support a petition for a writ of habeas corpus. *See Ross v. Estelle*, 694 F.2d 1008, 1011 (5th Cir. 1983); *Joseph v. Butler*, 838 F.2d 786, 788 (5th Cir. 1988). On the other hand, the Director supplied documentation supporting his claim that the letter was not placed in the prison mail system until September 29, 2005. The Court finds that the Petitioner has not shown that he submitted the letter before September 29, 2005, and the petition should be dismissed as time-barred.

Grounds for relief numbers one and two should be dismissed for the additional reason that they lack merit. The grounds for relief concern the sufficiency of the evidence. The Petitioner argued that there was insufficient evidence even though the victim's testimony alone was sufficient to support the conviction. His objections focused on alleged inconsistencies in the child's testimony; nonetheless, the child's testimony was sufficient to lead a rational trier of fact to find proof of guilt beyond a reasonable doubt, as required by the Supreme Court in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The evidence was sufficient to support the conviction. Moreover, the Petitioner failed to show, as required by 28 U.S.C. § 2254(d), that the State court findings resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court of the United States, or resulted in a decision that

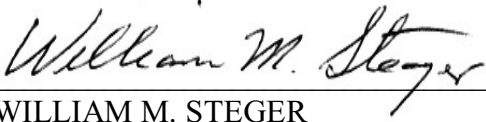
was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings. *See Moore v. Cockrell*, 313 F.3d 880, 882 (5th Cir. 2002). The Court thus finds that the objections lack merit, therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. It is further

ORDERED that a certificate of appealability is **DENIED**. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

SIGNED this 30th day of May, 2006.


WILLIAM M. STEGER
UNITED STATES DISTRICT JUDGE